

Court File Number: SJM/125/2023

Numéro du dossier :

IN THE COURT OF KING'S BENCH
OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

COUR DU BANC DU ROI DU
NOUVEAU-BRUNSWICK
DIVISION DE PREMIÈRE INSTANCE
CIRCONSCRIPTION JUDICIAIRE DE
SAINT JEAN

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY
THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD.,
SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED, ARSENAULT'S
FISH MART INC.

B E T W E E N:

ENTRE :

THE TORONTO-DOMINION BANK

Applicant REQUÉRANT

- and -

- et -

SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY
THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD.,
SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED AND
ARSENAULT'S FISH MART INC.

INTIMÉ

Respondents

**NOTICE OF MOTION
(FORM 37A)**

**AVIS DE MOTION
(FORMULE 37A)**

TO: THE RESPONDENT

DESTINATAIRE :

To: The Service List (see Schedule
"A" attached hereto

The Applicant will apply to the Court before the Court at the Saint John Law Courts, 10 Peel Plaza, Saint John, New Brunswick on the **17th day of October, 2023 at 10:00 a.m. (AST), via teleconference**, for an order as set out hereunder.

Le requérant demandera à la Cour au Palais de Justice de _____
Nouveau-Brunswick, _____, le
_____ 2023, à _____ h _____,
d'obtenir l'ordonnance décrite ci-
dessous.:

You are advised that:

Sachez que :

- (a) You are entitled to issue documents and present evidence at the hearing in French or English or both;
- (b) The Applicant intends to proceed in the ENGLISH language; and
- (c) If you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 5 days before the hearing.

- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
- (b) le requérant a l'intention d'utiliser la langue ANGLAISE; et
- (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 5 jours avant l'audience.

MOTION

On hearing of this Motion, The Toronto-Dominion Bank (the “**Applicant**”) intends to apply for the following relief pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect of South Shore Seafoods Ltd., Captain Cooke’s Seafood Inc., By the Water Shellfish (2012) Inc., Can-Am Lobster & Shellfish Ltd., South Shore Seafoods International Ltd., Bridge Lobsters Limited and Arsenault’s Fish Mart Inc. (collectively, the “**Debtors**”):

1. An Order substantially in the form of the draft attached hereto as Schedule “B”, among other things:
 - a) If necessary, abridging the time for service of this Motion, the third report of Deloitte Restructuring Inc., in its capacity as monitor (the “**Monitor**”), dated October 16, 2023 (the “**Third Report**”) and/or the Record on Motion or excusing the lack of service of this Motion and/or the Record on Motion; and
 - b) Amending Paragraph 8 of the ARCO (defined below) to increase the Borrowing Limit (defined below) from \$3 million to \$4 million.

Upon hearing of the Motion, the Applicant intends to argue the following grounds and rely upon the following statutory provisions or rules:

Background

1. On September 21, 2023, upon an application by the Applicant, the Debtors obtained protection under the CCAA pursuant to (i) an initial order and (ii) a charging order of this Court;

2. On September 29, 2023, upon a motion by the Applicant, the Court approved, among other things, (i) an amended and restated initial order, which extended the stay of proceedings to October 6, 2023; and (ii) an amended and restated charging order (the “**ARCO**”), which increased the quantum of the Administration Charge (as defined in the ARCO) to \$500,000;
3. On October 5, 2023, upon a motion by the Applicant, the Court further extended the stay of proceedings to October 25, 2023;
4. The next hearing in this matter was scheduled for October 25, 2023;

Increase in Borrowing Limit

5. Paragraph 8 of the ARCO authorized the Debtors to obtain and borrow amounts from the Applicant under a post-filing debtor-in-possession credit facility (the “**DIP Facility**”) up to a maximum principal amount of \$3 million (the “**Borrowing Limit**”);
6. The Monitor has advised that it expects the Debtors will require borrowings in excess of the current Borrowing Limit during the week of October 16, 2023 to pay critical obligations that are required to be paid that week, including payroll obligations and payments owed to certain critical suppliers
7. As a result, the Applicant is seeking to amend Paragraph 8 of the ARCO to increase the Borrowing Limit to \$4 million under the DIP Facility.
8. Calculation of the proposed quantum is based on the Debtors’ revised cash flow forecast in the Third Report, which reflects a funding requirement of up to \$4 million;

9. The Monitor supports the increase in the Borrowing Limit and is of the view that the proposed quantum is reasonable and appropriate in the circumstances;

Other Grounds

10. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
11. Rules 1.03, 2.01 and 3.02 of the *Rules of Court*, NB Reg 82-73; and
12. Such further and other grounds as counsel may advise and this Court may permit.

Upon hearing of the Motion, the following affidavits or other documentary evidence will be presented:

1. The Third Report, including the Appendices attached thereto; and
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

October 16, 2023

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Lawyers for the Applicant

SCHEDULE "A" – SERVICE LIST

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

SERVICE LIST

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<p>DELOITTE RESTRUCTURING INC. 1741 Lower Water St. Suite 800 Halifax, NS B3J 0J2 Email: southshoreseafoods@deloitte.ca</p> <p>James Foran jforan@deloitte.ca</p> <p>Kurt Macleod kmacleod@deloitte.ca</p> <p>Warren Leung waleung@deloitte.ca</p> <p>Jorden Sleeth jsleeth@deloitte.ca</p> <p>Proposed Monitor</p>	<p>RESOLVE ADVISORY SERVICES LTD</p> <p>David Boyd davidboyd.resolve@gmail.com</p> <p>Chief Restructuring Officer</p>
<p>STEWART MCKELVEY Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2</p> <p>Maurice Chiasson, K.C. Tel: 902.420.3300 mchiasson@stewartmckelvey.com</p> <p>Counsel for the Respondents</p>	<p>SOUTH SHORE SEAFOODS LTD., CAPITAL COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH MART INC.</p> <p>Michel Jacob michel@southshoreseafoods.ca</p> <p>Tim Williston tim@southshoreseafoods.ca</p> <p>The Respondents / Debtors</p>
<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street, West Toronto-Dominion Centre Toronto, ON M5K1K7</p> <p>Leanne Williams Tel: 416.304.0060 lwilliams@tgf.ca</p> <p>Patrick Power PPower@tgf.ca</p> <p>Lawyers for Business Development Bank of Canada and BDC Capital Inc.</p>	

<p>THUNDER COVE INVESTMENTS INC. Box 1600 Summerside, PE C1N 2V5</p> <p>902.853.7160 warrenellis@summersidechrysler.pe.ca</p>	<p>MAPLEWOOD TRUST, by its Trustee, Warren Ellis</p> <p>warrenellis@summersidechrysler.pe.ca</p>
<p>ROBERT ARSENAULT 7823 Route 11 Wellington, PEI</p> <p>afm@bellaliant.com</p>	<p>DEWIS COOKE 2 Water Street, Apt 1 Charlottetown, PEI C1A 1A1</p> <p>cookedewis@gmail.com</p>
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<p>BTW HOLDINGS INC. PO Box 1651 Summerside, PEI C1N 2V5</p> <p>dewis@bythewaterlobster.com</p>	<p>KEY MURRAY LAW 494 Granville Street, PO Box 1570 Summerside, PE C1N 4K4</p> <p>Derek Key, K.C. Tel: 902.436.4851 derek.key@keymurraylaw.com</p> <p>Lawyers for Dewis Cooke, Randy Cooke, Murphy's Limited Liability Company and BTW Holdings Inc.</p>
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Lawyers for Jeff Wood

PPSA Registrants

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THE BANK OF NOVA SCOTIA 10 Wright Boulevard Stratford, ON N5A 7X9	THE ROYAL BANK OF CANADA 10 York Mills Road, 3rd Floor Toronto, ON M2P 0A2

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SCHEDULE "B"
DRAFT ORDER (DIP INCREASE)

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

**IN THE MATTER OF THE COMPANIES' CREDITORS
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WATER SHELLFISH (2012) INC., CAN-AM LOBSTER &
SHELLFISH LTD., SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED,
ARSENAULT'S FISH MART INC. (each a "Company"
and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012)
INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH
SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

ORDER

(Approval of DIP Increase)

THIS MOTION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard by telephone conference;

WHEREAS the Applicant requested in its motion *inter alia* the granting of an order (the "**Order**") approving the increase of the maximum principal amount available under the DIP Facility (defined below) from \$3 million to \$4 million;

ON READING the Notice of Motion and the Motion Record, including the third report of the Monitor dated October 16, 2023 (the “**Third Report**”);

AND ON HEARING the submissions of counsel for the Applicant, the Monitor, the Companies and counsel for those other parties present, no one else appearing from the Service List although duly served as appears from the affidavits of service of [NAME] sworn October 16, 2023 and the Exhibits thereto (the “**Affidavit of Service**”);

IT IS HEREBY ORDERED THAT:

SERVICE

1. The service of the Notice of Motion, the Third Report and/or the Record on Motion as set out in the Affidavit of Service is deemed adequate so that this Motion is properly returnable today and further service thereof is hereby dispensed with.

DIP INCREASE

2. Paragraph 8 of the ARCO is amended as follows:

The Companies are hereby authorized and empowered to obtain and borrow under a credit facility from The Toronto-Dominion Bank (the “**DIP Lender**”) in order to finance the Companies’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~3~~4,000,000 (the “**DIP Facility**”) unless permitted by further order of this Court.

GENERAL

3. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
4. Each of the Applicant and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of

this Order and for assistance in carrying out the terms of this Order.

5. This Order and all of its provisions are effective as of _____ a.m./p.m Atlantic Standard/Daylight Time on the _____ day of _____.

Dated at Saint John, New Brunswick, this 17th day of October, 2023.

Justice of the Court of King's Bench
of New Brunswick